Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No._____

IN THE

Supreme Court of the United States

Jose Melendrez, Jr.,

Petitioner,

vs.

Francis E. Seib, Drug Enforcement Administration, Head DEA Agent in charge of Eagle Pass, Texas, in his official capacity; Moses Pena, Drug Enforcement Administration, DEA Agent in Eagle Pass, Texas, in his official capacity; Larry Leon, Drug Enforcement Administration, former DEA Agent in Eagle Pass, Texas, not in San Antonio, Texas, in his official capacity; Tony Quintanilla, former County Investigator of Zapata County, now a U.S. Border Patrol Agent in Fort Hancock, Texas, in his official capacity; Arnoldo Ramos, Sergeant/Investigative Department of Public Safety in Del Rio, Texas, in his official capacity; United States of America,

Respondents.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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In Pro Se

Attorney of Record *Attorney of Record for Petitioner*

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69 pgs

NOW COMES, Jose Melendrez, Jr., In Pro Se, files this **"Petition for Writ of Certiorari"** in good faith. With all due respect to the United States Court of Appeals for the Fifth Circuit and the U.S. District Court in Del Rio, Texas, the following questions presented herein by the Petitioner are undoubtedly clear and concise.

However, the lower Courts have acted deliberately, intentionally and unconstitutionally in **concealing exculpatory evidence**, and have not addressed the Petitioner's case appropriately. The lower Courts in this case have deliberately overlooked the Petitioner's instant case and have mis-apprehended the law that was established in the United States Court of Appeals for the Fifth Circuit in 1965, and other relevant case law.

In addition, the evidence in the record exposes a major "Conspiracy of Official Misconduct" in the Western District of Texas. Moreover, the Petitioner's relevant issues and exhibits entered as evidence to OPPOSE the U.S. Memorandum in Support of Notice of Substitution and Application for Order will clearly undermine the lower Court's decisions. Therefore, the Petitioner presents the following questions:

QUESTIONS PRESENTED FOR REVIEW

I. Whether the U.S. Court of Appeals was in error to AFFIRM the lower courts decision that Plaintiff -

/Appellant/Petitioner's lawsuit or claims were filed under the Federal Tort Claims Act ("FTCA"), 42 U.S.C. & 1983 and Bivens v. Six Unknown named Agents, 403 U.S. 388 (1971).

II. Whether the U.S. Court of Appeals was in error to AFFIRM the lower courts decision that Melendrez's Tort Claim did not require the tolling statute and therefore being time-barred.

III. Whether the U.S. Court of Appeals was in error to AFFIRM the lower courts decision based on HECK RULE.

IV. Whether the U.S. Court of Appeals was in error not to CONSIDER Melendrez's arguments that the district judge should have recused himself.

V. Whether the U.S. Court of Appeals was in error not to ENTERTAIN Plaintiff/ Petitioner's Supplemental Motion.

CERTIFICATE OF INTERESTED PARTIES

These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

Jose Melendrez, Jr., Plaintiff/Appellant/Petitioner

James F. Gilligan, Jr., Assistant United States Attorney, Counsel of Record for Defendants/Appellees, Francis E. Seib, Moses Pena, and Larry Leon

Seth Byron Dennis, Assistant Attorney General, Office of the Texas State Attorney General, Counsel of Record for Defendant/Appellee, Arnoldo Ramos

Jason Bradford Libby and Phillip A. McKinney, Counsels of Record for Defendant/Appellee Tony Quintanilla

St. Paul Insurance Company, Insurer for Defendant/Appellee, Tony Quintanilla

Jose Melendrez, Jr.

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Appendix B — Order Accepting Report and Recommendation of the United States Magistrate Judge filed on the 27th day of July 2001.

Appendix C — Judgment of the United States District Judge Fred Biery filed on the 27th day of July, 2001.

Appendix D — Judgment of the United States Court of Appeals for the Fifth Circuit filed on the 20th day of February 2002.

Appendix E — Attached (exhibit) Letter certifying the Supplemental Motion. Filed on September 24, 2001.

Appendix F — Judgment of the United States Court of Appeals for the Fifth Circuit filed on the 26 day of April, 2002., DENYING Plaintiff/Appellant/Petitioner's Motion for REHEARING EN BANC.

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE MELENDREZ, JR,

Petitioner,

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
) **SS** **SUPREME COURT**
) **RULE 29**
)
COUNTY OF WINNEBAGO)

Jose Melendrez, Jr., having been first duly sworn according to law, deposes and says:

That he is the petitioner in the above captioned case and the deponent herein.

That the deponent on the 07 day of May 2002 mailed his

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (App. D, infra) is not reported. The opinion of the United States District Court (App. C, infra) is also not reported.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered its judgment on February 20, 2002 (App. D, infra). The Petitioner applied for rehearing en banc. The Petition for a Writ of Certiorari is filed on May ___7___, 2002. The Court has jurisdiction under 28 U.S.C. Section 1254 (1). In addition, the Plaintiff/Appellant/Petitioner submits that the Petition for Writ of Certiorari has been properly commenced within the statutory time period as set forth by Rule 13 (1) of the Federal Rules of the Supreme Court of the United States of America.

STATUTORY PROVISION INVOLVED

28 U.S.C. Sections 2401(b) and 28 U.S.C. 2680 (h), and 28 U.S.C. 1346 (b) established by an Act of Congress provides that the Federal Tort Claims Act (FTCA) is the exclusive remedy for such claims against federal employees whom are in violation of

the Constitution or laws of the United States of America.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment of the U.S. Constitution provides that in all criminal or civil proceedings, the Plaintiff/Appellant shall have protection of his due process rights in any civil or criminal proceeding as his defense.

STATEMENT OF THE CASE

1. With respect to this lawsuit, Plaintiff/Appellant/Petitioner started his administrative remedy from 1997 all the way thru January 2000 by writting letters to the Defendants and FBI, U.S. District Attorney's Office in Texas, and U.S. Attorney General in Washington, D.C., complaining about his bad treatment by the Defendants.

2. When no actions have been taken by those officials who are supposed to answer to my complaint, Plaintiff/Appellant/Petitioner filed an administrative lawsuit pursuant to 28 U.S.C. 2401(b) and 28 U.S.C. 2680(h) based on abuse of process, and negligent misrepresentation, on June 20, 2000.

3. On July 18, 2000, notice was given to Plaintiff/Appellant/Petitioner by Aleta Bodolay, Paralegal

Specialist, Torts Branch, Civil Division, Washington, D.C. that his administrative lawsuit was received and commenced on June 27, 2000.

4. On August 11, 2000, Bettie E. Goldman, Associate Chief Counsel, Washington, D.C. made a response on behalf of the Defendants.

5. On August 7, 2000 Plaintiff/Appellant/Petitioner made a reply to the Defendants' response to his administrative lawsuit.

6. On November 2, 2000 Plaintiff/Appellant/Petitioner sent a notice to Ms. Bettie E. Goldman, the Attorney for Defendants that if a final decision is not made within the six-month time frame the Plaintiff/Appellant/Petitioner will file in U.S. District Court the lawsuit against Defendants no later than January 2, 2001.

7. No final decision has been made within the six-month time limitation allowed by 28 U.S.C. 2401, on this date the civil lawsuit is filed in Federal Court against the afore-mentioned Defendants.

8. On August 27, 2001, Plaintiff/Appellant/Petitioner files

his instant appeal against the Respondent/Appellee United States after the U.S. District Court for the Western District of Texas dismissed the Plaintiff/Appellant/Petitioner's lawsuit.

9. On February 20, 2002, The United States Court of Appeals for the Fifth Circuit dismissed Plaintiff/Appellant's lawsuit and AFFIRMED the lower courts decision.

10. On March 1, 2002, Plaintiff/Appellant/Petitioner filed an Original Petition for rehearing En Banc, and was denied on April 26 2002.

11. On May 07, 2002, the Plaintiff/Appellant/Petitioner files this instant Original Petition for Writ of Certiorari for the Courts judicial review.

STATEMENT OF THE FACTS

1. On December 1992, the Plaintiff was released on parole (six months left) from the Missouri Correctional facility (Boonville) to the custody of the State of Texas Law Enforcement to answer to a detainer (theft case). The Plaintiff was released from Bexar County Jail with the Help of his Attorney Mr. Carlos Martinez on two-thousand dollar bail bond. The Plaintiff returned to his home town in Crystal city, Texas to await trial.

2. The Plaintiff reported regularly to his Parole Officer in Del Rio, Texas, or Crystal City on certain occasions. The Plaintiff violated his parole on several occasions by getting dirty urinalysis(cocaine). The Parole Officer, (to the knowledge of the Plaintiff), never violated the Plaintiff by reporting to the State of Missouri, or the Texas authorities where the Plaintiff was out on parole and bond.

3. On March or April of 1993, the Plaintiff(Jose Melendrez Jr.) And Pedro Gutierrez were arrested by U.S. Border Patrols, and then referred to County Investigators in Zapata County, Tony Quintanilla headed the Investigation. They were asked to cooperate or go to prison because the investigator knew the Plaintiff was on Parole from Missouri, and bond from the State of Texas.

They cooperated and released the next morning.

4. I, Since I had a contract with County Investigator, Tony Quintanilla to work for him as his informant, consequently, I joined in March or April of 1993 the Guadalupe Garza's Drug Conspiracy as an informer and not as a confederate to further the scheme.

5. From March thru November of 1993, the Plaintiff was pressured into retrieving information on drug dealers by the County Investigator, the Plaintiff then met Guadalupe Garza on March or April of 1993 in Pearsal, TX. Where they became mutually aquainted. With orders and authorization of the County Investigator the Plaintiff was participating in undercover operations in the South Western District of Texas where 176 kilos of Marijuana and two automobiles were seized by U.S. Border Patrols and DEA Agents from Eagle Pass, Texas. The Plaintiff was referred to Arnoldo Ramos Sgt/Inv. Department of Public Safety in Del Rio, Texas, by Tony Quintanilla where the Plaintiff reported the marijuana load. The operation was a success and the Plaintiff received a thank you and to continue to look for drug dealers.

6. The Plaintiff was then subpeonaed, to testify in Del Rio, Texas, on the same load he had reported to Sgt/Inv.

Department of Public Safety, Arnoldo Ramos. The Plaintiff was then coached by Sgt./Inv. Arnoldo Ramos and U.S. District Attorney into misleading the grand jury by saying that he did not know about Guadalupe Garza's involvement with drug trafficking, and that the Plaintiff had just borrowed the truck to Guadalupe Garza to fix it. And it worked! The Federal Grand Jury never found out that I was the informant in the case, and it left me in a position to keep on working.

7. On November of 1993, the Plaintiff with orders and authorization of the County Investigator (Tony Quintanilla) continued to retrieve information on drug dealers in and out of the United States (Republic of Mexico). All this happened before I was even arrested on this case conspiracy to distribute marijuana with Guadalupe Garza.

8. On November of 1993, the Plaintiff (not being in the possession of the marijuana)was arrested by the Drug Enforcement Administration in Eagle Pass, Texas. (Special Agent Tapia, Larry Leon, and Francis E. Seib) for scouting the road for Guadalupe Garza. The Plaintiff explained he was working for the County Investigator (Tony Quintanilla) but the DEA was not interested, not unless, if I cooperated with their agency.

I was arrested and released that same day after giving a signed statement to the DEA, and took an oath not to disclose to anybody what I was doing for the DEA. I was also advised that they wanted Guadalupe Garza with as much marijuana as possible, not matter what the cost, (the DEA did not report this incident or arrest to the Texas authorities where the Plaintiff was already under Bond Restrictions).

9. After a couple of weeks I was constantly called and visited by Agent Tapia asking for information on drug dealers. Agent Tapia advised that the U.S. Attorney needed some cases or else they were going to pull the plug on the operation.

10. After a couple of weeks stressful meetings with DEA Agents, in January 1994, the Plaintiff finally got a drug deal in San Antonio, TX. There the Plaintiff participated with State and Federal Law Enforcement Agencies from Eagle Pass, TX and San Antonio, TX, in the seizure of 10 ounces of cocaine and one automobile. The Plaintiff was given a thank you and to resume working as an informant.

11. On or about the beginning of 1994, the Plaintiff also gave information to the DEA on County Investigator Domingo Moncada on weapons and marijuana dealings in Crystal City, and Eagle Pass, Texas. The information was good!

The County Investigator was arrested by the DEA and other law enforcement agencies in Crystal City, Texas.

12. The Plaintiff was advised to keep trying Guadalupe Garza on retrieving more information on drug loads. From January 1994 thru January 25, 1995. The Plaintiff was successful again on retreiving information on several occasions and incriminating other individuals in marijuana drug smuggling into the United States. The Plaintiff at times not at the crime scenes still reported hearsay and signed statement on several occasions.

13. On July 1994, the Plaintiff also participated in driving a marijuana load from Eagle Pass, Texas, to Pearsal, Texas with the assistance of State and Federal Law Enforcement agencies from (Eagle Pass, TX)(Pearsal, TX)and (San Antonio, TX) where more than 150-kilos of marijuana were seized. The Plaintiff was given a thank you and a two-thousand dollar pay-check from the Drug Enforcement Administration in Eagle Pass, Texas. (Special Agent Larry Leon).

14. On August of 1994, the Plaintiff asked the DEA Agent Larry Leon and Francis E. Seib for a letter of recommendation for his work as an informant to present to the 290th District court (Judge Sharron MaCrae)

in San Antonio, Texas, where the Plaintiff was placed on probation for 10 years for theft in Bexar County. The letter was not even considered by the Judge Sharron MaCrae, the advice from the Plaintiff's Attorney (Carlos Martinez) was that the DEA had not helped in anyway, as far as his work, as an informant was concerned.

15. The DEA did not ask the State of Texas, the 290th District Court and the Probation Office (Jan Taylor) for permission or authorization to use the Plaintiff as an informant during his time on bond for theft, and bond from Zapata, Texas, and his placement of probation.

16. On January 25, the Plaintiff participated in another marijuana load, where the Plaintiff called DEA Agent Francis E. Seib and Agent Moses Pena in Eagle Pass, Texas, and advised them that Guadalupe Garza was in town with another load.

17. The Plaintiff related the information on where and when, and the DEA missed the load
but managed to arrest Guadalupe Garza on Illegal entry into the United States.

18. On January 25, the Plaintiff was advised to report to Eagle Pass, TX to give a statement on the overall undercover

operation since March or April of 1993 thru January 25, 1995. The Plaintiff and the controlling Agent Larry Leon and another Federal Law Enforcement Officer (as a witness) signed and dated the statement.

19. On July 1995, the Plaintiff was arrested in North Dakota, with an indictment form Del Rio, TX, charging the Plaintiff with Count: (1) Possession with intent to Distribute Marijuana.
Count (2) Conspiracy Possession with intent to Distribute a quantity of Marijuana with Guadalupe Garza, Patricia Rodriguez, Miguel Reynaga, Rodolfo Rodriguez and others between 1993 and January 1995.

20. The Plaintiff attended a Detention Hearing in Fargo, North Dakota where the Honorable U.S. Magistrate Judge (Karen Klein) presided, the Plaintiff fought extradition to Texas and won on the grounds of conflicting testimony of the DEA Special Agent Moses Pena.

21. The Plaintiff was released to the Halfway House in Fargo, North Dakota where he resided until he was scheduled to appear in U.S. Court in Del Rio, Texas.

22. On December of 1995, the Plaintiff Pleaded guilty to that Conspiracy Possession with intent to Distribute a quantity

of Marijuana, and was sentenced to 84 months in prison.

REASONS FOR GRANTING THE WRIT

42 U.S.C. & 1983 and Bivens v. Six Unknown named Agents, 403 U.S. 388 (1971).

Under 42 U.S.C. & 1983 and Bivens v. Six Unknown named Agents, 403 U.S. 388 (1971), falls within the ambit of 28 U.S.C. 1331, and when Defendants are acting in their individual capacity.

Consequently, the Honorable Judges of the Fifth Circuit Court of Appeals were in PLAIN-ERROR and CONTRAVENTION with Plaintiff/Appellant/Petitioner's instant civil lawsuit and appeal. The Plaintiff/Appellant/Petitioner filed a FEDERAL TORT CLAIM , under the **FEDERAL TORT CLAIMS ACT, SECTIONS 28 U.S.C. 2401 (b) AND 2680 (h) BASED ON ABUSE OF PROCESS AND NEGLIGENT MISREPRESENTATION AGAINST FEDERAL OFFICIALS AND/OR EMPLOYEES ACTING IN THEIR OFFICIAL CAPACITY.** ***See Plaintiff/Appellant's Original Complaint under JURISDICTIONAL STATEMENT, in which, the Plaintiff/Appellant gave the court jurisdiction as a driving element under the Federal Tort Claims Act, Sections 28 U.S.C. 2401 (b) and 2680 (h) based on abuse of process and negligent misrepresentation and federal officials acting in their official capacity.***

The Plaintiff/Appellant/Petitioner did not give the district court jurisdiction under 42 U.S.C. A. & 1983, and Plaintiff/Appellant/Petitioner has no idea how the district court arrived at that conclusion.

Therefore, the U.S. Court of Appeals for the Fifth Circuit were in PLAIN-ERROR in ADOPTING AND AFFIRMING THE LOWER COURTS DECISION.

In addition, the U.S. Court of Appeals for the Fifth Circuit is in ***CONTRAVENTION*** with the law that was established in the U.S. Court of Appeals for the Fifth Circuit in 1965, **(Citing *Sears v. United States, 343 F.2d 139 (5th Cir. 1965)*,** in which, the ***SEARS RULE*** clearly states ***that as "it takes two to conspire" there can be no indictable conspiracy with a government informant.***

Moreover, the evidence in the record clearly shows that the Plaintiff/Appellant/Petitioner was a confidential informant.

Therefore, the district court was in plain-error in Substituting the United States for the individual named Defendants because the law did not allow the named Defendants to charge or undertake any criminal conspiracy investigation against Plaintiff/Appellant. In addition, the U.S. Court of Appeals for the Fifth Circuit were also in plain-error in affirming the district courts decision on their final judgment on page 2, paragraph 2, with respect to the SUBSTITUTION MOTION.

TOLLING THE STATUTE OF LIMITATIONS

In ***Irwing v. Department of Veterans Affair, 498 U.S. 89, 996 (1990),*** **the Supreme Court held that equitable tolling is permissible where the claimant has actively pursued his judicial remedies by filing "defective pleading during the statutory period, or where the complainant has been induced or tricked by the adversary's misconduct into allowing the filing deadline to pass.**

Consequently, the U.S. Court of Appeals for the Fifth Circuit did not review the Plaintiff/Appellant/Petitioner's Exhibits entered as evidence to oppose the U.S. Memorandum and Application for Order and Substitution Motion because if the U.S. Court of Appeals would have thoroughly revised the Exhibits #12, #14, #15,, #16, #17, #18, #19, #20, it would have clearly shown the ***INDUCEMENT, TRICKERY, DECEIT, AND MISLEADING STATEMENTS MADE BY THE UNITED - STATES ATTORNEYS OFFICE IN SAN ANTONIO, TEXAS, INTO ALLOWING THE STATUTE OF LIMITATIONS TO PASS AND INTO BELIEVING THAT THE GOVERNMENT/U.S. ATTORNEYS OFFICE WOULD EVENTUALLY HELP THE PLAINTIFF/APPELLANT AS TIME PERMITTED. (See also, Plaintiff/Appellant's Opening Brief on pages 20 and 21.***

With this in mind, "IF" the U.S. Supreme Court thoroughly revises the Plaintiff/Appellant's exhibits and case law, with respect to the Substitution Motion, it will clearly distinguish the governments' misconduct into allowing the filing deadline to pass.

Therefore, the lower courts were in plain-error in affirming the lower court decision.

HECK RULE

In ***Heck v. Humphrey, (1994) 512 U.S. 477, 129 L.Ed. 383, 114 S.Ct. 2364,*** the majority states clearly that Justice Souter's discussion of Abuse of Process, post, 494-495, 129 L.Ed.2d, at 399, does not undermine this principle. ***It is true that favorable termination of prior proceedings is not an element of that cause of action - but neither is an impugning of those proceedings one of its consequences. The gravamen of that tort (ABUSE OF PROCESS) is not the wrongfulness of that prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends. Id at 394 note 7(b).***

Therefore, with this in mind the Plaintiff/Appellant/Petitioner spells out the definition of **ABUSE OF PROCESS** from the **LAW OF TORTS, BY MR. WILLIAM L. PROSSER.**

ABUSE OF PROCESS differs from MALICIOUS PROSECUTION in that the gist of the tort is not commencing an action or causing process to issue without justification, but misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish. The purpose for which the process is used, once it is issued, is the only thing of importance. CONSEQUENTLY, IN AN ACTION FOR ABUSE OF PROCESS IT IS UNNECESSARY FOR THE PLAINTIFF TO PROVE THAT THE PROCEEDING HAS TERMINATED IN HIS FAVOR, OR THAT THE PROCESS WAS OBTAINED WITHOUT PROBABLE CAUSE OR IN THE COURSE OF A PROCEEDING BEGUN WITHOUT PROBABLE CAUSE.

In addition, on page 2, paragraph 1, on the Judges final judgment affirming the lower courts decision, the Judges for the U.S. Court of Appeals clearly present and state that the Plaintiff/Appellant/Petitioner ***NOW SEEKS DAMAGES UNDER THE "FTCA" ON GROUNDS THAT THE DEFENDANTS COMMITTED TORTS OF ABUSE OF PROCESS AND NEGLIGENT MISREPRESENTATION, WHICH IS TRUE, AND ON THE FACE OF THE PLAINTIFF/APPELLANT'S ORIGINAL COMPLAINT UNDER (JURISDICTIONAL STATEMENT) IT CLEARLY ESTABLISHES THAT FOR THE RECORD.***

However, the Judges for the Fifth Circuit Court of Appeals are ***AFFIRMING THE LOWER COURTS DECISION BASED ON HECK RULE, CONSEQUENTLY, HECK RULE FALLS WITHIN THE AMBIT OF MALICIOUS PROSECUTION AND PLAINTIFF/ APPELLANT/PETITIONER DID NOT FILE UNDER MALICIOUS PROSECUTION AND THE JUDGES FOR THE FIFTH CIRCUIT COURT OF APPEALS ARE IN CONFLICT AND MISAPPREHENDING PLAINTIFF/APPELLANT'S ORIGINAL COMPLAINT AND APPEAL, AND CLEARLY CONTRADICTING THEMSELVES WITH RESPECT TO THE ABOVE-MENTIONED SCENARIO, FACTS, AND THE JUDGES OWN STATEMENT ON PAGE 2, PARAGRAPH 1, WITH RESPECT TO THE JUDGES FINAL JUDGEMENT.***

Therefore, with this being said the Judges for the U.S. Court of Appeals for the Fifth Circuit were in PLAIN-ERROR in affirming the lower courts decision based on ***HECK RULE AND ANY BIVENS CLAIMS UNDER 42 U.S.C.A & 1983, WITH RESPECT TO MALICIOUS PROSECUTION.***

JUDGES RECUSAL

With respect to disqualification of justice, judge, or magistrate. 28 U.S.C. Section 455(b)(1) provides that he shall also disqualify himself in the following circumstances where he has a

personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

Interm of personal knowledge of disputed facts concerning the proceeding, however, Plaintiff/Appellant Jose Melendrez, Jr., outlines that he had pleaded guilty before Judge Fred Biery whereas the evidentiary facts concerning the criminal proceedings are related to the facts in questions with respect to his civil lawsuit. One can be said, in avoiding redundance, that the facts extracted from the sentencing proceedings are paralleled to the plea proceedings because Judge Fred Biery was the presiding judge over all of the afore-mentioned proceedings.

It should be noted that Plaintiff/Appellant addressed the issues of recusal before the judge, and the adversary party was aware of the allegations. In the U.S. Memorandum in Support of Substitution and Application for Order, filed on March 16, 2001, furthermore, on the United States of America motion to dismiss or, in the alternative motion for Summary Judgment, filed on March 23, 2001, additionally, was also mentioned on the Objection Motion to the Report and Recommendation of the U.S. Magistrate Judge (Dennis Green).

Therefore, the Judges were in plain-error in not entertaining Plaintiff/Appellant's argument with respect to "recusal"

SUPPLEMENTAL MOTION

With respect to the SUPPLEMENTAL MOTION, on February 20, 2002, the Honorable Fifth Circuit Court of Appeals entered judgment under Fed. R. App. R. 36 and AFFIRMED the lower courts DECISION on all the issues presented therein, however, on February 20, 2002, the U.S. Court of Appeals for the Fifth Circuit ALSO entertained a new issue that enlightens the case before the eyes of the Supreme Court. This new issues is the Plaintiff/Appellant's Motion to Supplement the Record on Appeal which was DENIED.

Consequently, Motion to Supplement the record on appeal is the base and foundation of Plaintiff/Appellant's lawsuit. The evidence provided therein, proves, certifies, and establishes for the record that the lower courts committed errors in law and are currently involved in the manipulation of the JUDICIAL SYSTEM.

As of thus the issues presented by the Plaintiff/Appellant on his appeal have not been properly addressed or correctly revised.

Consequently, the Plaintiff/Appellant/Petitioner has no other recourse but to correctly address the issues before this Honorable Supreme Court of the United States of America.

And with all due respect to the Honorable Judges of the Fifth Circuit Court of Appeals and the Honorable Clerk of Court for the Fifth Circuit Court of Appeals, the Plaintiff/Appellant will prove, clarify, certify and establish for the record that the Honorable Judges of the Fifth Circuit Court of Appeals and the Honorable Clerk of Court for the Fifth Circuit Court of Appeals are **CONTRADICTING THEMSELVES AND ARE OVERLOOKING, MISAPPREHENDING, MIS-PLACING AND ARE IN CONFLICT WITH PLAINTIFF/APPELLANT'S MOTION TO SUPPLEMENT THE RECORD.**

Therefore, the Plaintiff/Appellant will state, certify and establish for the record, and to the U.S. Supreme Court that Plaintiff/Appellant's instant civil lawsuit, and the evidence presented, herein, PROVES that the Honorable Judges of the Fifth Circuit Court of Appeals and the lower courts were NOT FAIR or CORRECTLY MOTIVATED to ENTERTAIN Plaintiff/Appellant's instant civil Lawsuit/case.

With this being said and stated for the record, the Plaintiff/Appellant/Petitioner will attach additionally exhibits, in regards, to the SUPPLEMENTAL MOTION filed by the Plaintiff/Appellant/Petitioner on September 28, 2001, to prove that the judges were not fair.

First of all, the Honorable Judges of the Fifth Circuit Court of Appeals, Honorable Judges ***KING, JOLLY AND DeMOSS*** all stated for the RECORD and their FINAL JUDGMENT that Melendrez Also filed a motion to supplement the record. However, the items he offers in supplementation are already in the record. His motion to supplement is DENIED.

Consequently, the Honorable Judges of the Fifth Circuit Court of Appeals are in CONFLICT with the Honorable Deputy Clerk of Court, Ms. Lisa Conrad for the Fifth Circuit Court of Appeals. (See Plaintiff/Appellant/Petitioner's attached exhibit Appendix E for verification).

It should be noted for the RECORD that the Honorable Deputy Clerk of Court, Ms. Lisa Conrad for the Fifth Circuit Court of Appeals filed on September 24, 2001, a notice to Plaintiff/Appellant Jose Melendrez Jr., advising the Plaintiff/Appellant that the district court in Del Rio, Texas, Del Rio Division, Western District of Texas, claimed that Plaintiff/Appellant/Petitioner had not filed or entered exhibits. And if the Plaintiff/Appellant wished to SUPPLEMENT THE RECORD ON APPEAL he should file a motion specific to that relief which complies in every aspect with Fed. R. App. P. 27 (a)(2)(A). You should attach any documents with which you wish to supplement the record to your motion.

With this being stated for the record, the Honorable

Judges of the Fifth Circuit Court of Appeals are in PLAIN-ERROR in DENYING Plaintiff/Appellant's Motion to Supplement the Record on Appeal, in addition, the Honorable Judges *CANNOT CLAIM* that the ITEMS Plaintiff/Appellant OFFERED on his SUPPLEMENTATION MOTION are already in the record because the ITEMS the Plaintiff/Appellant OFFERED on his SUPPLEMENTATION MOTION, according to the Honorable Deputy Clerk Lisa Conrad for the Fifth Circuit Court of Appeals, and the District Court in Del Rio, Texas, Del Rio Division, Western District of Texas, THE EXHIBITS (29-TOTAL ENTERED AS EVIDENCE TO OPPOSE THE U.S. MEMORANDUM IN SUPPORT OF NOTICE AND APPLICATION FOR ORDER AND SUBSTITUTION MOTION), WERE NEVER ENTERED. (SEE PLAINTIFF/APPELLANT'S ORIGINAL MOTION TO SUPPLEMENT THE RECORD.

Consequently, there seems to be some ***CHICANERY*** in the **UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, DEL RIO DIVISION, DEL RIO, TEXAS AND THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT IN NEW ORLEANS, LOUISIANA. The EVIDENCE** provided herein by Plaintiff/Appellant **PROVES AND CERTIFIES** Plaintiff/Appellant's allegations and claims.

In addition, the EVIDENCE (29-EXHIBITS) presented by the Plaintiff/Appellant on his SUPPLEMENTAL MOTION are the base and foundation of Plaintiff/Appellant's case, and when read in a liberal fashion it certifies and proves the Plaintiff/Appellant's case against all of the named Defendants herein.

Moreover, the evidence presented herein on the Supplemental Motion by the Plaintiff/Appellant puts the Honorable Judges of the Fifth Circuit Court of Appeals in CONTRAVENTION with the SAME LAW that was established in the ***UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT IN 1965, IN WHICH, THE SEARS RULE CLEARLY STATES THAT "AS IT TAKES TWO TO CONSPIRE" THERE CAN BE NO INDICTABLE CONSPIRACY WITH A GOVERNMENT INFORMER WHO SECRETLY INTENDS TO FRUSTRATE THE CONSPIRACY. Citing Sears v. United States, 343 F.2d 139, 142 (5th Cir. 1965). In addition, the Fifth Circuit Court of Appeals REVERSED the Defendants CONVICTION.***

It is quite obvious that the Honorable Judges of the Fifth Circuit Court of Appeals and the lower district court **DID NOT** address the Plaintiff/Appellant's complaint/Appeal ***APPROPRIATELY***. Therefore, the Plaintiff/Appellant/Petitioner asks and requests the U.S. Supreme Court to ***ENTERTAIN*** the Writ before the eyes of this Honorable Court.

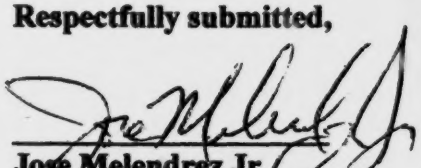
CONCLUSION

WHEREFORE PREMISES CONSIDERED,

Plaintiff/Appellant respectfully requests the U.S. Supreme Court to thoroughly review the instant matter whether the U.S. Court of Appeals for the Fifth Circuit overlooked or misapprehended Plaintiff/Appellant/Petitioner's claims and allegations. If errors in the law were committed or misapprehended by the U.S. Court of Appeals for the Fifth Circuit Court of Appeals, in essence, Plaintiff/Appellant respectfully requests the U.S. Supreme Court to **REVERSE** the U.S. Court of Appeals (FIFTH CIRCUIT) **DECISION** and remand the case back with instructions to the district court.

DATED: May 7, 2002

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true copy of the Plaintiff/ Appellant/Petitioner's Jose Melendrez Jr's., **"Original Petition for Writ of Certiorari"** was mailed on the date indicated below to the following persons:

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The original and 40 copies of the same material have been mailed by U.S. Postal Service and Certified Returned Receipt on the date indicated below to the Honorable Clerk of Court for the Supreme Court of the United States.

Dated: May 07, 2002

Jose Melendrez Jr.

IN PRO SE